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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 ) MD Docket No. 95-3  
Assessment and Collection of )  
Regulatory Fees for Fiscal Year 1995 )

COMMENTS OF U S WEST COMMUNICATIONS, INC.

I. INTRODUCTION AND STATEMENT OF POSITION

In its Notice of Proposed Rulemaking in this proceeding, the Federal Communications Commission ("Commission") proposed certain mechanisms to recover the amount of regulatory fees mandated by Congress, pursuant to Section 9 of the Communications Act, for fiscal year 1995.<sup>1</sup> The fee collection mechanism utilized to recover fees in 1994 was based on a fee per 1,000 presubscribed lines imposed on local exchange carriers ("LEC") and interexchange carriers ("IXC").<sup>2</sup> The Commission requested comment on the continuation of this type of recovery mechanism, as well as proffering an alternative: carrier fees would be based on the number of minutes of interstate service in calendar year 1994 (utilizing an interstate revenue factor in the overall calculation).<sup>3</sup> In addition, the Commission proposed to expand the base of entities/carriers responsible for the payment of regulatory fees to include

<sup>1</sup>See In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 1995, MD Docket No. 95-3, Notice of Proposed Rulemaking, FCC 95-14, rel. Jan. 12, 1995 ("NPRM"). See also 47 USC § 159.

<sup>2</sup>Compare NPRM ¶ 59 and 47 CFR § 69.116.

<sup>3</sup>For LECs, the number of interstate minutes would equal the number of originating and terminating access minutes. Id. ¶ 60.

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not only LECs, IXC's and Competitive Access Providers ("CAP"), but also domestic and international carriers that provide operator services, Wide-Area Toll Service ("WATS"), 800, 900, telex, telegraph, video, other switched, interstate access, special access and alternative access services, either by using their own facilities or by reselling facilities and services of other carriers.<sup>4</sup>

U S WEST Communications, Inc. ("U S WEST") supports the Commission's action to expand the class of carriers required to contribute to the payment of regulatory fees beyond the traditional concepts of LECs and IXC's. The expansion of the class of responsible payees is a positive step toward the realization of a more "equitable distribution of the fees among entities within . . . [the] industry."<sup>5</sup>

We oppose the continuation of the "presubscribed line" methodology on two grounds. First, the current methodology actually works at cross purposes with the equitable solution that Congress had envisioned. Second, it is a methodology too complex for the payment process to have to bear. Furthermore, we question the complexity of the Commission's proposed alternative, combining as it does a minutes of use ("MOU") and a total interstate revenue factor.

We believe that a more appropriate methodology, and certainly one simpler to administer for both the Commission and the industry, is a methodology based solely on interstate revenues,<sup>6</sup> i.e., a fee assessment methodology similar to that

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<sup>4</sup>Id. ¶ 57.

<sup>5</sup>House Report on HR 1674 (H.R. Rep. No. 207, 102d Cong., 1st Sess. 1991), Attached Statement at Section 3 ("House Report").

<sup>6</sup>While the Commission did not specifically request comment on alternative collection methodologies, it did state that "[a]ll relevant comments will be considered by the Commission before final action is

adopted by the Commission in the context of Telecommunications Relay Service ("TRS").<sup>7</sup>

Herein, U S WEST proposes that the Commission devise a fee collection mechanism based on a model already in use, and one which already collects "fees" or revenues from a broad-base of telecommunications providers: the TRS model. Pursuing a collection methodology based on the TRS model has a number of advantages: (1) it is a model currently in operation in the industry and, overall, is successful; (2) it allows for collection from a broad-base of telecommunications entities, entities virtually identical to the expanded class of carrier entities suggested by the Commission in its regulatory fee collection proposal; (3) it is technology-neutral; and (4) it reduces the burden of regulatory oversight and carrier resource dedication to the implementation of what is essentially a compliance/taxation process.

**II. NEITHER OF THE COMMISSION'S PROPOSALS ARE THE BEST AND BOTH ADD UNDUE COMPLEXITY TO WHAT COULD OTHERWISE BE A FAIRLY SIMPLE ADMINISTRATIVE PROCESS**

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U S WEST has no objection to that portion of the Commission's fee collection methodology that pertains to the allocation of fees to Private Radio, Mass Media, Common Carrier and Cable Services. We believe that this allocation, based on the number of Full-Time Equivalent Employees required to conduct the Commission's activities in each area, is a matter of particular Commission expertise and appears

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taken in this proceeding." NPRM ¶ 68. The instant suggestion is certainly relevant and, we believe, presents a fee collection model superior to either of those suggested by the Commission.

<sup>7</sup>See In the Matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Third Report and Order, 8 FCC Rcd. 5300 (1993) ("Third Report and Order").

reasonable. Accordingly, we would not propose any change in this aspect of the Commission's proposal.

We do, however, have objections to the fee assessment methodology aspects of the proposals themselves. The Commission's first proposal is to continue with the current structure, basing the regulatory fee assessed on the number of lines presubscribed to the respective carrier.<sup>8</sup> As has been stated in earlier proceedings addressing similar regulatory fee assessments based on presubscribed lines, such an allocation mechanism does "not accurately reflect the various [carriers'] share[s] of switched services and thus does not equitably allocate costs . . . among switched service providers."<sup>9</sup>

The proposal suffers similar infirmities as between and among special access providers. For example, a DS1 facility can carry 24 simultaneous voice or transmission paths. One carrier might use these facilities 24-hours a day, while another carrier may only use the facilities during peak work-day hours (i.e., 8 a.m. to 5 p.m.). Despite the varying volumes of traffic traversing these facilities, under the Commission's proposal, both carriers would be assessed the same regulatory fee. That is not an "equitable" allocation structure.

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<sup>8</sup>See NPRM ¶ 59 (and see attached rules at Appendix B).

<sup>9</sup>Comments of American Telephone and Telegraph Company ("AT&T") filed Apr. 7, 1994, at 4-5, in In the Matter of Implementation of Section 9 of the Communications Act: Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, MD Docket No. 94-19. As AT&T further points out, carriers with a "carrier of last resort" status fair poorly under an allocation mechanism utilizing a presubscribed line base because generally such carriers have many low volume users, with customers averaging significantly less usage and revenue per line than customers of other carriers. Id. at 5.

Additionally, as discussed in more detail below,<sup>10</sup> the use of the presubscribed-line methodology requires certain needlessly complex conversions. The added complexity simply creates additional possibilities for error and increases the regulatory burden visited upon carriers subject to the regulatory fee assessment regime.

In essence, the current methodology does little to advance the goal of the regulatory fee regime, in that it fails to “align[ ] the revenue each of the FCC bureaus receives from the users it regulates with the costs each of [those] bureaus budget for performing its regulatory functions.”<sup>11</sup> Failing in this most essential realization, the current presubscribed-line methodology should not be used.

As an alternative, the Commission suggests that the regulatory fee assessment be based on the number of interstate minutes multiplied by a revenue factor.<sup>12</sup> While this model at least makes some use of revenues in its calculations, it too is unduly complex relative to the ends to be achieved.

### III. THE STRAIGHT REVENUE MODEL USED IN THE TRS CONTEXT IS SUPERIOR TO EITHER OF THE COMMISSION'S SUGGESTIONS

A collection fee model based solely on revenues, such as that employed in the context of TRS cost-recovery, is superior to either of the models proposed by the Commission. Indeed, its superiority is demonstrated by the fact that it already applies to a broad base/class of carriers (a breadth the Commission is attempting to

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<sup>10</sup>See discussion below at 7-8.

<sup>11</sup>House Report, attached Statement at Section 3.

<sup>12</sup>See NPRM ¶ 60.

replicate in this proceeding by essentially using the same "list" of carriers as those previously identified in the TRS proceeding), and makes clear that the payments associated with the regulatory regime are exogenous in nature.<sup>13</sup>

In July of 1993, the Commission released its Third Report and Order with respect to the recovery of costs associated with the delivery of TRS service. Of particular significance to the instant proceeding, the Commission directed that common carriers providing interstate services contribute to the TRS fund on the basis of the interstate proportion of their gross revenues from all identified services (said services encompassing a broad range of interstate telecommunications services).<sup>14</sup> For efficiency purposes, the Commission directed contributors to calculate their contributions based on the previous year's interstate revenues, using a contribution factor determined by the Commission.

U S WEST believes that interstate revenues, pure and simple, are the most appropriate basis for computing the regulatory fees to be paid by each carrier. Such revenues provide a common unit of measurement for all carriers. These revenues are reported to the National Exchange Carrier Association ("NECA") for purposes of administering the TRS fund, so the information is readily and easily available.<sup>15</sup>

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<sup>13</sup>See discussion below at Section IV.

<sup>14</sup>In the Commission's Third Report and Order, the Commission affirmed its position with respect to the broad range of interstate services that were to be used in assessing the appropriate contributions to the TRS fund. Third Report and Order, 8 FCC Rcd. at 5302 ¶ 12. Of further significance is the fact that, in the TRS proceeding, the Commission rejected a proposed allocation mechanism based on a service provider's relative shares of switched services because it "would not account adequately for services that utilize dedicated facilities" (*id.* at 5303 ¶ 16), clearly identifying the fundamental flaw in attempting to utilize a presubscribed-line methodology in an equitable fashion.

<sup>15</sup>Interstate revenues are reported to the NECA for the prior year in April, providing adequate time for the Commission to compile and determine the assessment for the next fiscal year. Using NECA's 1994 TRS projected revenues for included carriers of \$77.6 billion (see In the Matter of

Furthermore, a positive correlation between revenues and the payment of regulatory fees seems to have been aspired to by at least certain Congressional constituencies during consideration of the regulatory fee statute itself.<sup>16</sup>

The calculation of the regulatory fee would be much simpler utilizing a straight revenue basis. Under the Commission's current proposals, certain awkward conversions are required that simply add complexity to the administration of the process and promote the possibility of error.

For example, under the Commission's current presubscribed-line proposal, private line services will have to be converted to equivalent units.<sup>17</sup> Such a conversion would not be required under a reported-revenue model. Private line interstate revenues are reported along with all of the other interstate revenues subject to TRS assessments.

The Commission discusses another awkward conversion necessary with respect to its presubscribed-line approach applicable to switched services such as Message Toll Service, WATS, 800 and operator calls not billed to the number from which the call is placed. If these billing accounts can be associated with a carrier's presubscribed-line counts, then the carrier does not have to report these billing accounts for purposes of regulatory fee assessments. If the account cannot be associ-

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Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, CC Docket No. 90-571, Order, DA 94-161, rel. Dec. 30, 1994 ¶ 8), under U S WEST's proposal the regulatory fee factor for IXCs, LECs, CAPs and other providers of cellular/public mobile radio would be \$.565 per thousand dollars of revenue. Simple and straightforward.

<sup>16</sup>See text at note 5, supra.

<sup>17</sup>The Commission describes a methodology of converting a 4 KHz or 64 Kbps equivalents to one voice grade line (customer unit). NPRM ¶ 59.

ated with a presubscribed line, then the line is reportable for fee assessment purposes. This routine requires special tracking programs to be instituted by all carriers, adding to their costs of doing business (solely for a regulatory end) and adds absolute inefficiency into the business operations. Tracking of this sort is not required either as a matter of necessity (i.e., in order to calculate, assess or pay regulatory fees) or of the public interest.

Another cross-over assumption is made in the Commission's alternative proposal: a conversion of private line billed interstate revenues to access minutes, multiplied by 10, is required.<sup>18</sup> None of these assumptions/conversions would be necessary, if the Commission adopted the interstate revenue unit.

While the TRS model is one involving a "fund," with a fund administrator making payouts, there is nothing about the model that would suggest that its only efficacy is associated with "fund administration." Information and efficiencies capable of being recognized by utilizing this model could and should be used for other "monetary collection" endeavors pursued by the Commission.

#### IV. REGULATORY FEE PAYMENTS SHOULD BE TREATED AS EXOGENOUS COSTS

The TRS model also supports the propriety of treating the payment of Congressionally-mandated, Commission-prescribed, regulatory fees as exogenous.<sup>19</sup>

While the Common Carrier Bureau ("CCB") appreciates the propriety of treating

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<sup>18</sup>Id. ¶ 60.

<sup>19</sup>In the Commission's Fourth Report and Order, it was specifically held that the TRS fund contributions could be treated as exogenous costs under price cap regulation. In the Matter of Telecommunications Relay Services, and the Americans with Disabilities Act of 1990, Second Order on Reconsideration and Fourth Report and Order, 9 FCC Rcd. 1637, 1640 ¶ 18 (1993).



such compelled payments as exogenous,<sup>20</sup> the current situation would preclude carriers from taking advantage of the exogenous treatment in 1995 (for payments made relative to 1994).

In its October, 1994 Order, the CCB stated that "[e]xogenous cost adjustments for future changes in the level of the regulatory fees . . . shall be included in a carrier's annual price cap tariff filing."<sup>21</sup> However, the annual filings are made in April of each year, with an effective date of July 1. It is unrealistic to assume that the CCB will conclude the instant proceeding in time for carriers to include the regulatory fees in their filings.<sup>22</sup>

Therefore, U S WEST requests that, in addition to the determination of the methodology to be used for purposes of calculating the appropriate regulatory fees to be paid, the CCB again provide a mechanism for carriers to recoup these payments through targeted tariff filings, subsequent to the annual filing. We ask that such ruling be made as an integral part of the substantive order pertaining to the regulatory fee calculation methodology, in the first instance.

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<sup>20</sup>In October of 1994, the CCB sua sponte granted carriers a waiver to treat the payment of regulatory fees (those paid in 1994) as exogenous. See In the Matter of Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Communications Act, Order, 9 FCC Rcd. 6060 (1994) ("Order"). Finding that the cost of such fees met the Commission's criteria for exogenous treatment, the CCB proceeded to grant a waiver allowing carriers to treat such fees as exogenous through the vehicle of a tariff filing, effective Nov. 15, 1994, on not less than 45 days notice. Id. ¶¶ 4-5. Subsequently, the CCB issued an Erratum extending the tariff filing date to Jan. 15, 1995, to permit the requisite notice period. In the Matter of Price Cap Treatment of Regulatory Fees Imposed by Section 9 of the Communications Act, Erratum, 9 FCC Rcd. 6487 (1994).

<sup>21</sup>Order, 9 FCC Rcd. at 6060-61 ¶ 5. MCI Telecommunications Corporation ("MCI") has filed a Petition for Reconsideration with respect to the Order. See MCI's Petition for Reconsideration filed Nov. 7, 1994.

<sup>22</sup>First, the CCB must determine the most appropriate methodology for the calculation of the fees. Then, carriers must actually do the calculations to determine the actual amount of fees to be paid. Such will, undoubtedly, not be done by April 1.

V. CONCLUSION

For the above reasons, U S WEST requests that the Commission give serious consideration to a regulatory fee calculation/payment model based solely on interstate revenues, as those revenues are reported by identified carriers to the TRS fund administrator. A methodology based on interstate revenues avoids unwarranted discrimination, more accurately reflects plant utilization, and has the added benefit of being fairly simple in its administrative requirements.

Respectfully submitted,

U S WEST COMMUNICATIONS, INC.

By:

Kathryn Marie Krause  
Kathryn Marie Krause  
Suite 700  
1020 19th Street, N.W.  
Washington, DC 20036  
303-672-2859

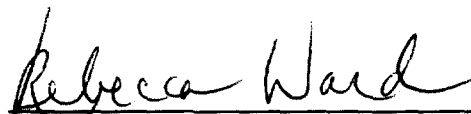
Its Attorney

Of Counsel,  
Laurie J. Bennett

February 13, 1995

## **CERTIFICATE OF SERVICE**

I, Rebecca Ward, do hereby certify that on this 13th day of February, 1995, I have caused a copy of the foregoing **COMMENTS OF U S WEST COMMUNICATIONS, INC.** to be served via hand-delivery, upon the persons listed on the attached service list.

  
\_\_\_\_\_  
Rebecca Ward

**James H. Quello**  
Federal Communications Commission  
Room 802  
1919 M Street, N.W.  
Washington, DC 20554

**Andrew C. Barrett**  
Federal Communications Commission  
Room 826  
1919 M Street, N.W.  
Washington, DC 20554

**Reed E. Hundt**  
Federal Communications Commission  
Room 814  
1919 M Street, N.W.  
Washington, DC 20554

**Susan P. Ness**  
Federal Communications Commission  
Room 832  
1919 M Street, N.W.  
Washington, DC 20554

**Rachelle B. Chong**  
Federal Communications Commission  
Room 844  
1919 M Street, N.W.  
Washington, DC 20554

**Kathleen M.H. Wallman**  
Federal Communications Commission  
Room 500  
1919 M Street, N.W.  
Washington, DC 20554

**Peter W. Herrick**  
Federal Communications Commission  
Room 528  
1919 M Street, N.W.  
Washington, DC 20554

**International Transcription  
Services, Inc.**  
Suite 140  
2100 M Street, N.W.  
Washington, DC 20037